

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4603 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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DECEASED SOMABHAI DEVJIBHAI CHAUHAN

Versus

STATE OF GUJARAT

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Appearance:

NANAVATY ADVOCATES for Petitioners

MR PRASHANT G DESAI,GOVERNMENT PLEADER for Respondents.

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CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 20/11/98

ORAL JUDGEMENT

One Somabhai Devjibhai Chauhan filled in Form under section 6 of the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as "the ULC Act") inter alia stating therein that he held land bearing survey No. 500 admeasuring about 4856 square metre in village Gotri Taluka-District Vadodara and he had also a house bearing No. 393 admeasuring around 64 sq. mtrs. He inter alia stated in the relevant columns of the Form that the land was agricultural land and that he was having grand son namely Prabhat Ambalal Chauhan. By the impugned order dated 10th June, 1983, the competent authority declared 3417 sq.mtrs. of land as surplus land out of S. No. 500 sq. mtrs. The matter then proceeded further as reflected from another impugned order annexure "B" under section 11 of the ULC Act. It is the case of the petitioner that Somabhai died on 23rd

August, 1988 and they were unaware of further proceedings. At the same time, it has been their case that the impugned order would stand vitiated in view of the fact that the ULC Act itself would not be applicable by virtue of the decision of the Hon'ble Supreme Court in case of Smt. Atia Mohammadi Begum vs. State of UP & Ors. reported in AIR 1993 SUPREME COURT 2465. in as much as the deceased Somabhai himself has stated in the Form that the land was agricultural land. It has also been the case of the petitioner that although Prabhat was named in the Form, he was not given any opportunity of being heard by the competent authority.

The petitioners have explained at length the cause for filing the present petition at such belated stage.

I have heard the learned advocate appearing for the petitioner and Mr. Desai, learned Government Pleader for the respondents. As can be seen from the facts set out in the petition, at least, one fact is certain that although Prabhat was mentioned in column-14 of the Form under section 6 of the ULC Act, he was not issued any notice and that he was not given any opportunity at any part of the proceedings to be heard into the matter. It has been submitted on behalf of the petitioners that his name was stated in the form because the land in question was a coparcenary property and it was not self-acquired property of deceased Somabhai. However, this court is not inclined to enter into the merits with regard to the facts of the case of the petitioners. At the same time, it is clear that the learned competent authority appears to have not heard said Prabhatbhai.

Bearing in mind the facts set out for delay in filing the petition as well as the submissions noted hereinabove, this is a fit case for remanding the matter to the competent authority for deciding afresh after hearing the petitioners and any other party interested in the property in question. In the result, following order is passed :

Petition is allowed. The impugned orders Annexure "A" & "B" shall stand set aside and the matter is remanded to the competent authority for deciding the same afresh under section 8/9 of the ULC Act after hearing the petitioners and any other party who is found to be interested in the property in question. It is expected that the competent authority will decide the matter as expeditiously as possible preferably within three months from the date of receipt of the writ. It

will be open to the parties to make all available submissions with regard to the facts and law concerning the property in question qua provisions of the ULC Act. The parties will maintain status quo as on today till such decision is taken by the competent authority. Rule is made absolute in terms indicated hereinabove with no order as to cost.

20.11.1998. (M.S.Parikh,J.)

Vyas